IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 24 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRASINH @ MUNNO BHIKHUBHA JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 24 of 2003

MR AR SHAIKH for Petitioner No. 1

MS HARSHA DEVANANI, AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/05/2003

ORAL JUDGEMENT

1. The petitioner - detenu, by filing this petition, has challenged the order of detention passed by the Commissioner of Police, Rajkot City detaining him under the provisions of Sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter be referred to as the "PASA Act"] on several

grounds. While filing this petition, the petitioner has annexed the order of detention dated 17.11.2002 passed by the Commissioner of Police, Rajkot City as well as the committal order directed the petitioner to detain at Sabarmati Central Jail, Ahmedabad and the grounds of detention dated 17.11.2002 with the material, which were relied upon by the detaining authority at the time of passing the detention order against the petitioner, the representation made by the petitioner through advocate with the detaining authority dated 16.12.2002.

2. During the hearing, Mr.Anil S. Dave, learned advocate for Mr.A.R.Shaikh, learned advocate for the petitioner has taken me through the petition and the grounds of detention as well as the documents, which were relied upon by the detaining authority at the time of passing order. As found from the grounds of detention, the detaining authority has, on considering the material placed before him, recorded satisfaction that the detenu is acting prejudicial activities to the maintenance of public order and with a view to prevent him, he has recorded satisfaction that the order of detention is required to be passed and the detaining authority was satisfied that the detenu is a dangerous person within the meaning of Section 2(c) of the PASA Act. As found from the grounds of detention, the detaining authority has considered three criminal cases registered against the petitioner detenu. Out of three criminal cases, two criminal cases were registered at Bhaktinagar Police Station, Rajkot vide C.R.No.164/2002 dated 24.04.2002 for the offences punishable under Sections 324, 188 and 114 of the I.P.C. and another case vide C.R.No. 296/2002 dated 08.08.2002 for the offences punishable under Sections 324, 504 and 188 of the I.P.C., which was occurred between 18.30 hours to 19.00 hours and in that case, the accused was arrested by the police on 10.08.2002 and both the cases were also pending before the competent Court. Last case registered at Rajkot Taluka Police Station, Rajkot City vide C.R.No.128/2002 dated 22.10.2002 for the offences punishable under Sections 506(2), 504 and 427 of I.P.C., and as per the said case, the offence has taken place on 18.08.2002 and the petitioner - detenu was arrested by the police on 22.10.2002 and the said case was pending under investigation. The detaining authority has also considered the other material namely statements of two witnesses recorded by the police, which were verified by detaining authority himself on the subsequent date. The statement of the witness No.1 was recorded by the police on 12.11.2002 and another statement of the witness No.2 was recorded by the police on 13.11.2002. These two

statements of the witnesses have highlighted about the incident which has taken place at the instance of the accused, which shows that the petitioner detenu was acting prejudicial activities to the maintenance of public order, in respect of the incident acted on 13.06.2002 and 13.11.2002. The detaining authority has verified these two statements of the witnesses on 14.12.2002. After verification of the statements of the witnesses by the detaining authority, the detaining authority was satisfied that the identity of the witnesses is not required to be disclosed due to the fear express by the witnesses at the instance of the detenu and the detaining authority, while not disclosing the names and addresses of the witnesses, has claimed privilege as contemplated under Sub-Section (2) of Section 9 of the PASA Act. Mr.Dave, learned advocate for the petitioner has raised several contentions, while challenging the order of detention, has placed in service only one ground, as contended in the petition that the continue of detention to the detenu is illegal. According to Mr.Dave that the material relied upon by the detaining authority and serve on the detenu, the two documents namely medical certificates of the injuries of the injured persons, furnished by the detaining authority in English language and has not translation of the said documents were furnished with the detenu, as the detenu is not knowing the English language and as the detenu is not knowing the English language, it is incumbent upon the detaining authority to furnish the translated copies of the said two certificates in Gujarati language and while challenging the order of detention, the petitioner has taken the ground at ground No.5(20). As found from the said ground, the contention raised in the petition that while furnishing the material to the petitioner at page Nos.11 and 55 of the compilation of papers supplied to the detenu along with the grounds of detention are in English language. The petitioner does not know the English language, in fact, as he has studied upto 7th Standard Gujarti. His mother tongue is Gujarati which is known to the authority as per the statement obtained by the authority at the time of executing the order of the detention. At the time of serving the grounds of detention and other materials to the detenu and by not furnishing these two certificates, the right of the petitioner to make representation is violated and the petitioner could not make effective representation and, on that ground also, the order of detention deserves to be quashed and set aside.

3. Mr.Dave, in support of his submission, has placed reliance upon the decision of the Hon'ble Apex Court in

the case of Ibrahim Ahmad Batti Vs. State of Gujarat and others, reported in AIR 1982 S.C. 1500. The Hon'ble Apex Court, while dealing with the said case has held, that by not supplying the documents in the language known to the detenu, the same is vital and the Hon'ble Apex Court has, in turn, set aside the order of detention. The Hon'ble Apex Court in para-11 has observed that all documents, statements and other materials incorporated in the grounds by reference, which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not latter than 15 days from the date of his detention and secondly, all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Art.22(5) of the Constitution.

4. Ms.Harsha Devanani, learned AGP for the respondents, while arguing the matter, has supported with the order of the detention passed by the detaining authority. She has also taken me through the reply affidavit filed by the detaining authority in detail. In reply affidavit of the detaining authority, in para-19, has averred that page Nos.11 and 55 of the compilation are copies of medical certificates with regard to the injury caused to the victim of activities of the detenu as well as his associates and the representation made by the Advocate of the detenu and as the Advocate knows English language, the contention raised by the detenu in this para is not tenable at law. Ms.Devanani has also submitted that at the time of execution of the order and the other material, contents of the grounds of detention were explained to the detenu in the language known to him, such contention is not tenable. I have also seen the endorsement made by the detenu, while receiving the order of detention and the grounds of detention etc., the detenu has also signed before serving officer. As found from the said documents, it is an admitted fact that the petitioner is studied upon to 7th Standard Gujarati and the petitioner knows only Gujarati language and the grounds of detention and mostly all the documents are in Gujarati language, if the documents are in Gujarati language then there is no question by serving officer to explain the same in Gujarati language to the detenu. Further, there is nothing to indicate recorded by the serving officer, which are found in English language and explained to the detenu in Gujarati language. No reply

affidavit is filed by the serving officer to support the endorsement made, while serving the material. In absence of such affidavit and in light of well settled legal position, the material which was furnished by the detaining authority namely two medical certificates, which are in English language, are not furnished to the detenu in the language known to him i.e. in Gujarati language and the right to make representation against the order of detention is very much effected as the documents were not furnished to the detenu in the language known to him.

6. In light of the aforesaid decision of the Hon'ble Apex Court and as observed earlier in absence of any affidavit of serving officer, this Court is of the view that the continue detention of the detenu is illegal and only on that ground, the petition is allowed. The impugned order dated 17.11.2002 passed by the Commissioner of Police, Rajkot City is quashed and set aside. The detenu Chandrasinh @ Munno Bhikhubha Jadeja is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[D. K. Trivedi, J.]

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